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21 October 1955

MEMORANDUM FOR THE RECORD

SUBJECT: "Employee" Services

1. This morning from 0930 to 1200, I spoke with Mr. James J. McGurrian, a member of the Program Planning Staff of the Civil Service Commission. The meeting was at my request in order that I might pursue with Mr. McGurrian, whose primary responsibility concerns policies for the hiring of foreign nationals abroad, certain aspects of the problem we face in determining the status of contract employees and employees of proprietaries.

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2. Prior to working for CSC, Mr. McGurrian was employed by the Air Force, where he was a co-employee of [redacted] Chief of the Contract Personnel Division of this Agency. In his then capacity, Mr. McGurrian had considerable contact with the provision of cover for this Agency and so knows something of our problems.

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3. In May of 1951, the Air Force completed a study in which they had the cooperation of many other Government agencies, including the Commission, pertaining to the hiring of foreign nationals abroad. As background for this study, they had to consider more general factors concerning employment of all types of personnel by the Government. Against this background knowledge, Mr. McGurrian was able to offer the following guidance, which is, however, by his own statement, not necessarily the last word on each point.

4. Speaking of Government agencies generally and not of CIA in particular, Mr. McGurrian said that it is not possible for an agency to enter into contracts for personal services except with consultants and experts. All other types of personnel must be appointed.

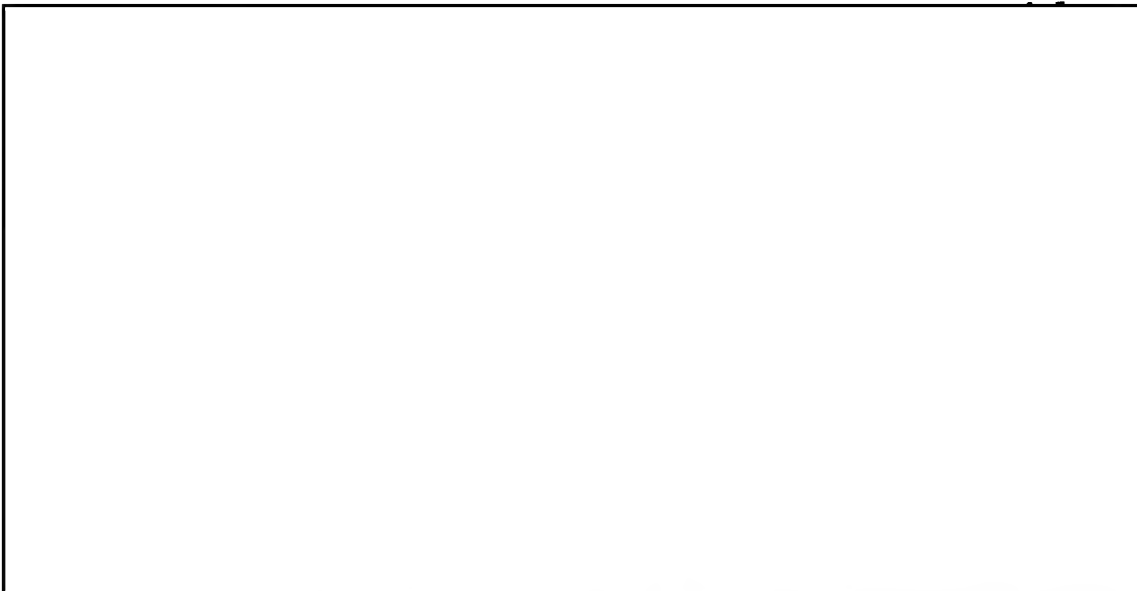
5. He pointed out, however, that despite this general rule, about which there seems to be no question, many devices have been resorted to in the hiring of foreign nationals abroad for the various components of the Department of Defense. In hiring foreign nationals it often becomes necessary, either because they require it, or because their Government desires to afford to them the protection of local laws, such as Workmen's Compensation. Conversely, it is

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often inappropriate to provide them with the benefits available generally to employees of the United States Government. One device that has been used is to enter into a procurement contract with the local government for the delivery of so many working bodies. The expense of this is charged to Object Class O-7, Non-personal Services. In some cases, the instrument is an executive agreement rather than a contract, or an agreement of whatever type is under aegis of an earlier treaty. Where a treaty is involved, everything is probably perfectly legal. Where there is no treaty involved, this is strictly a device. Mr. McGurrian indicated that under almost identical fact situations in two different areas, one area was charging the expense to O-7 and the other to O-1. In some areas only an oral agreement exists between a United States Commander and local authorities. In the Azores, where we were informally withholding taxes for the local government, the Comptroller General said we couldn't do this and something should be done to straighten it out, but that he would not require any immediate action because this course of action had gone on for some time. Mr. McGurrian said the main problem is that our legislation is not equipped to meet the problems of what I referred to as our "colonial era". Local commanders, having an over-riding mission to accomplish, are forced to work out whatever is acceptable to the local government regardless of the limitations of their own authority.

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7. In discussing the use of the Armed Services Procurement Act for the hiring of foreign nationals abroad, Mr. McGurrian pointed out that Army JAG had held this legal and Air Force JAG had held it illegal.

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In my opinion and that of Mr. McGurrian, Air Force JAG reached a more reasonable legal conclusion, and, in fact, it is impossible for me to see how Army JAG could have reached the conclusion it did without some very tortuous and specious reasoning. Essential, however, even to this type of application of the Act, is the intervention of a third party. The Army has contracted with local governments. I do not think we could use this technique anyway, because we can't very well contract in most circumstances with the host government, and a proprietary wouldn't really be a third person.

8. Mr. McGurrian said that typically Services employed wives on excepted indefinite appointments. Since excepted appointments are within the control of an agency head, at least when based upon statute, he felt that they could be made for a year, two years, sixteen hours, three weeks, one year, or less, or almost any other time span that would seem appropriate so that no problems of tenure would be likely to arise.

9. Comment:

I learned from talking to Mr. McGurrian that the Defense agencies operating abroad are probably using a lot of illegal means to get personnel--foreign national personnel--but that when they are dealing with United States citizens, they rely on excepted appointments.

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Unless there are reasons arising from this Agency's peculiar functions which require variations, it seems to have been the established Agency policy to accord as closely as possible with general personnel policies of the Government.

10. I would greatly appreciate comments on the foregoing from any member of this Office.

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Office of General Counsel

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